

SENATE.....No. 127.

Commonwealth of Massachusetts.

The Committee on matters of Probate and Chancery, to whom was referred the petition of Jonathan Tobey, praying for the repeal of so much of a resolve passed in the year 1839, as allows the commissioners of Bristol County to hear and determine his claims against said county, make the following

R E P O R T :

That, in 1839, the legislature passed a resolve, upon application of this petitioner, authorizing the commissioners of the county of Bristol to examine the claims which the petitioner alleged he had against said county, and for which he had no legal or equitable remedy, and to make him such allowances therefor as to them might seem expedient, just and right ; and said commissioners were further authorized, if they saw fit, to refer the claims of said Tobey to the determination of arbitrators mutually selected by themselves and the said Tobey—the decision of said commissioners or said arbitrators, in the premises, to be final.

The claims, alluded to in the resolve, grew out of a contract, between the said Tobey and the county of Bristol, for making a road from Taunton to New Bedford, and consisted of certain demands of the said Tobey remaining after two verdicts had

been rendered in his favor—one against the county of Bristol, and another against the commissioners of said county.

It appeared, upon the hearing before your committee, that, in 1839, the county commissioners and the said Tobey agreed upon a submission of such claims as were mutually agreed to be referred. The arbitrators were selected, and the proper papers were made, and signed on the part of the chairman of the commissioners, and delivered to the brother of said Tobey, for him to procure the signatures of the other parties. From causes which it is not necessary to detail, the arbitrators did not meet; but it did not appear that the meeting was prevented by any act or neglect of the said commissioners.

At the last session of the legislature, said Tobey presented a petition, (which will be found in the legislative documents of 1847, Senate No. 51,) asking for the passage of a resolve, submitting to the legal voters of Bristol County this question, viz: "Shall the county commissioners refer the claims of Jonathan Tobey to the determination of arbitrators mutually selected by themselves and said Tobey—the decision of said arbitrators to be final." And after a hearing upon the subject, the prayer of said petition was refused.

On the 29th of September, 1847, said Tobey presented to said county commissioners a petition which, after reciting that the chairman of the county commissioners had suggested that the board were ready to adjudicate the claims of said Tobey, stated in substance that, from the long controversy that existed in relation to his claims, no body of men, selected as the commissioners were, "could fail to have been exposed to sources of bias which might insensibly interfere with the exercise of judicial functions," and concluded by asking an arbitration, as the just alternative under the circumstances. The commissioners thereupon passed an order that they were ready to examine the claims, and make such allowances therefor, as to them might seem "expedient, just and right." The said Tobey then reiterated his former objection—that the commissioners *might* be open to an insensible bias, and proposed that, at some time suitable for them and him, when he might be prepared to explain his claims, they would examine them, and that the claims

should be examined with the understanding that, if there should be any which he might fail to establish to their satisfaction, such claims should be submitted to arbitration. The county commissioners declined assenting to this arrangement, and, at the request of said Tobey, his petition was dismissed.

After this proceeding before the county commissioners, the petitioner presented here his present petition, asking for the repeal of so much of the resolve of 1839, as authorizes the commissioners to hear and determine his claims against the county of Bristol.

The committee consider that the resolve of 1839 was a favor granted to the petitioner not enjoyed by other citizens, inasmuch as it authorized the county of Bristol to allow him claims, not collectable either at law or in equity. He has not shown to the committee that the present board of commissioners are not well qualified to discharge the duty contemplated in the resolve, nor any reason to suppose them influenced by any bias or prejudice, for or against his claims.

Under these circumstances, to grant the prayer of the petitioner would imply, on the part of the legislature, a doubt of the just and proper action of the commissioners, which the petitioner before the committee failed to raise. And the committee do not believe that the commissioners of Bristol County would assume the examination of questions, which they could not equitably determine.

Your committee, therefore, report that the petitioner have leave to withdraw.

TAPPAN WENTWORTH, *for the Committee.*

